IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 359 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT
Versus
BABARBHAI VECHATBHAI VANKAR & ORS

==========

Appearance :
MR PRADIP D BHATE APP for Appellant
MR KIRTIDEV R DAVE with MR RAHUL K DAVE for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 09/08/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order rendered by Additional Sessions Judge, Third Fast Track Court, District – Panchmahal at Godhra, on 21st of June, 2004, in Sessions Case No. 300 of 2001. Present respondents were the accused of the Sessions Case and learned Trial Judge acquitted all the respondents of the charges levelled against them under Sections 395, 506 (2) to read with Section 188 of the Indian Penal Code as well as for the charge under Section 135 of the Bombay Police Act.

2 Learned APP Mr. Pradip D Bhate for the State and learned Advocate Mr. Kirtidev R. Dave for respondents No. 1 to 4 were heard. Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. K.R. Dave appearing for all the respondents waives on behalf of the respondents. Both the learned counsels requested the Court to hear the appeal finally as Record and Proceedings of the Trial Court is available and that they would supply necessary copies of evidence recorded and the documents produced.

3 Request of both the counsels granted and the matter was heard finally.

4 A crime came to be registered before Kothamba Police Station, vide Crime Register No. I-66/1999, for the offences punishable, as stated above, against all the four respondents and charge sheet came to be filed in the court of Judicial Magistrate, First Class, at Lunavada and the case was registered to be Criminal Case No. 92 of 2001. The said Criminal Case was committed to the Court of Sessions, vide Order passed by Judicial Magistrate, First Class, on 13th of September, 2001, and the said case was registered as Sessions Case No. 300 of 2001 in the Court of Sessions Judge, District Panchmahal at Godhra.

5 According to prosecution case, complainant gave his complaint before Kothamba Police Station on 2nd of July, 1999. Complainant Lalabhai Devabhai Vankar declared that in the village Kharol he owned land bearing survey No. 360. Out of this survey Number, Part-I, admeasuring 20 gunthas land and in Part-VI of that survey number, admeasuring six gunthas of land, had frequently claimed by his cousin accused Babarbhai Vechatbhai Vankar and they had attempted to grab the said land. Dispute in respect of the above land continued for about five years and ensued in civil as well as criminal cases. According to complainant, Civil Court had granted ad interim stay against accused Babarbhai Vechatbhai Vankar not to enter in that

disputed land, which was in force. On the day of incident i.e. on 2nd of July, 1999, at about 7.30 a.m. accused Babarbhai Vechatbhai Vankar, his sons accused Kanubhai Babarbhai Vankar and Vinodbhai Babarbhai Vankar along with other hired persons of Baroda, came to village Kharol in one Tata Sumo car. Accused No.4 Dhaniben Babarbhai Vankar was also with them. All of them formed an unlawful assembly with axe, dharia, sticks and sword and entered in the disputed land and cut the trees and thereafter accused party came to the house of the complainant and gave abuses to the complainant. They unlawfully entered his house and accused Vinodbhai Babarbhai Vankar inflicted blows with stick on Govindbhai Laljibhai, son of the complainant. Those blows landed on right shoulder, right ankle of the hand, etc. A person accompanying them also inflicted a blow with blunt part of an axe. Thereafter Kanubhai Babarbhai Vankar also inflicted pipe blows on the right thigh of Ramilaben Lalabhai, daughter of the complainant. They also inflicted a pipe blow on the back of Kokilaben, who was wife of nephew Jasubhai of the complainant. They lifted the household goods and damaged the same. Therefore, the family members came out of the house and took shelter in other houses of that area. Accused party started pelting stones on other houses also and complainant escaped from this attack and reached at the police station and narrated his complaint. A crime being registered by PW-12 Punjabhai Devabhai Parmar, investigation was

handed over first to PW-13 Head Constable Jayantibhai Prabhatsinh Chavda and thereafter he entrusted this investigation to PW-15 Raijibhai Gulabsinh Parmar. He thereafter transferred the investigation to PW-16 PSI Hirabhai Valabhai Rathod and, ultimately, as above stated, a charge sheet came to be filed against the four accused.

6 Prosecution examined as many as 16 witness to prove its case and placed on record voluminous documentary evidence. After evidence was over, Trial Judge recorded the further statements of all the accused. Accused Nos. 1 and 4 submitted their written statements and stated that the complaint came to be filed by the complainant on account of enmity. In fact, land bearing Survey No. 360/1, 360/6 and 360/10 in revenue record belonged to accused No.1 and he cultivated the land, for which the complainant had filed one Regular Civil Suit No. 225 of 1995 which came to be dismissed by the Civil Court. Appeal also came to be filed by the complainant bearing Regular Civil Appeal No. 51 of 2003, but in the said Appeal, no interim stay in favour of the complainant had been granted by the court. The parties were inter-related and accused No.1 was serving as Talati at the relevant juncture at village Pavijetpur, Taluka – Ranbhun. The complainant had also filed one complaint earlier against accused party and Sessions Case No. 70 of 1997 was proceeded against the accused, in which they were acquitted.

In the said proceeding, complainant had admitted in his deposition, which was produced on record, that the land bearing Survey No. 360/6 belonged to accused No.1 Babarbhai Vechatbhai Vankar. According to accused No.1, neither he nor his wife accused No.4 were in Panchmahal District on 2nd of July, 1999. Accused further stated that in the deposition of Investigating Officer Mr. Raijibhai Gulabsinh Parmar it transpired that on 22nd of July, 1999, accused No. 1 was not at Kharol and was doing his duty from 8.00 a.m. to 12.00 noon and for that the Investigating Officer has recorded some statements also and those witnesses could not be examined by the prosecution. According to the accused, evidence of prosecution witnesses was utterly wrong and they were innocent.

7 The learned Trial Judge thereafter heard prosecution as well as accused and came to the above conclusion of acquitting the accused.

8 Learned APP Mr. Pradip D Bhate has vehemently urged that there are in all five eye witnesses of the incident. Out of them, three are injured. Those witnesses are PW-4 Ramilaben, PW-6 Govindbhai Lalbhai, son of complainant and PW-5 Kokilaben. The injuries of PW-4 and PW-6 are proved by PW-8 Dr. Prabhakar Ramubhai Bhatia. In addition to this, complainant PW-1 Lalabhai Devabhai Vankar, is an eye

witness. Though one more eye witness Somabhai Dahyabhai Vanakar has been examined, but after some deposition, he could not reply in his examination-in-chief and, therefore, he was dropped by the prosecution. He submitted that even though there was mighty evidence of these four witnesses, out of which, three were injured, learned Trial Judge came to perverse conclusion of acquitting the accused. The crime against all the accused are proved beyond doubt so far as the injuries are concerned and the property robbed by the accused. The reasons given by the Trial Court for acquittal are not cogent and cannot stand to reason and, hence, this Appeal is required to be allowed and the accused are required to be convicted for the offences for which they are charged after setting aside the orders of acquittal.

9 On the other hand learned Advocate for the respondents Mr. K.R. Dave urged that the injuries alleged to have been received by PW-4 and PW-6 are superficial, for which they omitted to give any history before the Medical Officer. There is no medical evidence for the injuries received by PW-5 Kokilaben, except her version. The evidence of Lalabhai Devabhai Vankar complainant was rightly not believed by the Trail Court, as in complaint, he omitted everything in respect of the robbery committed by the accused and after some days the police recorded the statement about robbery committed by the accused, which

was an after-thought and cannot be believed. Having regard to the contradiction in the depositions of Ramilaben and Govindbhai, it is submitted that those witnesses are not reliable and case is not proved against the accused beyond reasonable doubt. It is submitted that during investigation, it could not be revealed that there were other persons along with present four respondents at the time of the incident and none of the accused person has been shown to be absconding in the charge sheet and, therefore, the charge against the accused under Section 395 of the I.P. Code would not stand, as prosecution failed to prove that there were five persons in committing the robbery. It is submitted that so far as the injuries caused to the prosecution witnesses, there is no reliable or cogent evidence. It is submitted that the Trial Court has assigned proper and plausible reasons for acquittal, and in appeal against the acquittal, unless it is found that the reasons assigned by the Trail Court for acquittal are perverse, no interference is permitted. It is, therefore, submitted that the Appeal is liable to be dismissed.

10 Having heard rival contentions, it is necessary to appreciate the evidence recorded during trial and the reasons assigned by the Trial Court for acquittal of the accused.

11 PW-1 complainant Lalabhai Devabhai Vankar, examined

at Exhibit – 13, stated about the incident and further stated that the accused trespassed in their house and robbed ornaments, household goods and cash amount. This witness was not believed by the Trial Court because he admitted that the disputed land belonged to the accused No.1 and even from the revenue record it could be made out that the land did not belong to complainant party. Even the theory of committing robbery could not be mentioned by PW-1 in his complaint produced at Exhibit- 14. Enmity between the parties and long standing dispute, according to learned Trial Judge, must have tempted to file this complaint by the complainant. In the version complainant given before the police and before the Court, contradiction surfaces as not to believe the witness. In complaint the complainant did not state that about 10 persons with axe, dharia, sticks, etc trespassed in his house and robbed ornaments and amount of Rs. 10,000/-. This witness is not much supported by other two witnesses i.e. Ramilaben and Govindbhai, whose evidence also, according to the learned Trial Judge, should not be believed. For unidentified persons, which, according to complainant, were hired by the accused, nothing turns out during investigation and no identification parade also came to be conducted. For all those reasons, the learned Trial Judge did not place reliance on the evidence of the complainant.

12 For the evidence of PW-4 Ramilaben Lalabhai , she stated that the incident occurred on 2nd of July, 1999. She heard commotion in the morning and when she came out of her house, she was confronted by her “Bhabhi” Kokilaben (wife of his brother) and she was shouting that she was beaten and requested to save her. The witness noticed that accused and some other unidentified persons were pelting stones and entered in her house. Accused Kanubhai Babarbhai Vankar inflicted one pipe blow on right thigh of her. She is the daughter of complainant. According to her, her father filed a complaint and she was an indoor patient for 8 to 10 days. She has been cross-examined. She was confronted with her police statement an she denied that she did not state before the police that on hearing the commotion she came out and confronted with Kokilaben. She also denied that she did not state before the police that the accused entered in her house by pelting stones. She stated that robbery was not committed in her presence. She also admitted that the disputed land belonged to the accused. The learned Trial Judge did not place reliance on the witness because she did not notice the robbery and she had very simple injuries. She stated before the Doctor in the history that she got injuries by pipe and omitted to state anything and, therefore, considering her evidence along with other witnesses, no reliance was placed by the Trial Court in her evidence.

13 While PW-6 Govindbhai Lalbhai stated in his deposition that on 2nd of July, 1999 while he was in his house he was beaten by Vinodbhai Babarbhai Vankar near right ankle of the hand. The other persons inflicted injuries by blunt part of an axe and thereafter he was unconscious and came to the consciousness after half an hour and he noticed that the household goods in his house was disturbed and scattered. The doors were broken. His father had given the complaint. Thereafter he obtained treatment from the Doctor. In his cross-examination, he admitted that Survey No. 360/6 was a disputed land between them and the accused and in revenue record the land belonged to the accused. He admitted that on the day of incident, there were no exchange of abuses. He admitted that the financial position of the accused was good. He admitted that the doors of the house were opened and there was no exchange of words at the time of the incident. The learned Trial Judge did not believe his evidence because of contradiction in the evidence of this witness and the general tenure of the prosecution case. Moreover, the injuries to this witness was simple and before the Doctor, however, he omitted to state the names of the assailants, and according to the learned Trial Judge, on account of long pending dispute about Survey No. 360/6, the witness had prompted to depose before the court and no reliance can be placed upon this witness.

14 Likewise PW-5 Kokilaben Jasubhai Vankar, examined by prosecution at Exhibit – 20, stated that she was feeding cattle and accused Kanubhai Babarbhai Vankar gave pipe blows on her back and she noticed that complainant came out of his house. She did not receive any treatment from Doctor. She was also not believed by the Trial Court on account of the above said reasons that, firstly, there was no medical evidence in support of the say of this witness and she has not noticed robbery.

15 Except above eye witnesses the remaining eye witness PW-11 Somabhai Dahyabhai Parmar is not useful to the prosecution as his deposition could not be recorded in full.

16 Other witnesses i.e. PW-2 Somabhai Manabhai Vankar, examined at Exhibit – 15, is panch of panchnama of scene of offence Exhibit – 16. He has not supported the prosecution case. PW-3 Dahyabhai Khanabhai Vankar, examined at Exhibit-17, also did not support the prosecution case because he was also panch of panchnama, Exhibit – 16. PW-7 Dilipbhai Chelabhai Chouhan also is a panch about cutting of the trees by the accused but he has not supported the prosecution case. PW-8 Dr. Prabhakar Ramubhai Bhatia, examined at Exhibit – 25, stated that he had examined Ramilaben and Govindbhai at

Godhra. They were injured by iron pipe blows and the injuries were simple. In his cross-examination, he stated that injuries were such as could have been treated at village Kothamba and it was not necessary for them to go to the Civil Hospital at Godhra. Prosecution Witness No.9 Sabbir Abdulkarim Punawala, examined at Exhibit – 29, is a panch witness of panchnama at Exhibit – 24 in respect of Tata Sumo car seized by the police, but PW-9 Sabbir Abdulkarim Punawala did not support the prosecution case. PW-10 Manilal Ramabhai Vankar, examined at Exhibit – 30, is an eye witness and stated that while he was cleaning his teeth in his house, he noticed that a crowd of 10 persons came and inflicted blows to Kokilaben. Accused Kanubhai was in that crowd and accused Vinodbhai inflicted a stick blow to Govindbhai and all of them thereafter ran away in a car. In his cross-examination he also admitted that there was a dispute about land between the parties, and in favour of complainant, he had filed an affidavit in a proceeding before the Deputy Collector. He has been asked in cross-examination about the location of his house and the location of the house of the complainant. His eye sight was weak. In his police statement he omitted to state that while he was cleaning his teeth, he found that a crowd of 8/10 persons came and inflicted blows. On appreciation of his evidence by the Trial Judge, it is found that the location of his house, he stated in cross-examination that it would be

impossible for him to notice anything from his house whatever was taking place in the house of the complainant. Therefore, the Trial Court did not place any reliance on this witness. PW-11 Somabhai Dahyabhai Vankar could not depose fully and his evidence is not useful to the prosecution. PW-12 Pujabhai Devabhai Vankar is an witness who registered the offence and recorded the complaint. He is examined at Exhibit – 33. PW-13 Jayantibhai Prabhatbhai Chavda, examined at Exhibit – 34, is the first Investigating Officer and according to him he draw the panchnama of scene of offence and recorded some statements. Contradictions in the evidence of witnesses was proved in his evidence. Vide Exhibits 63 to 71 certified copies of earlier proceedings and revenue record is produced and accordingly PW-14 Dineshchandra Manabhai Yadav, examined at Exhibit – 53, who was Talati-cum-mantri at the relevant juncture, admitted that Survey No. 360/1, 360/6 and 360/10, according to revenue record, belonged to Babarbhai Vechatbhai Vankar. PW-15 Raijibhai Gulabsinh Parmar is examined at Exhibit-72. According to him, on 2nd of July, 1999, he was serving as PSI at Kothamba Police Station and on that day he was sent to Lunavada for bandobust. He received information about the present incident and after coming from Lunavada, he took over the investigation from Head Constable Jayantibhai Prabhatsinh Chavda. In his cross-examination, he admitted that in his investigation he came to know that the cause of

dispute was land and cutting of the trees from land bearing Survey No. 360/6. He did not take care to see revenue record. Though according to him, he came to know that there were civil proceedings between the parties about this land. Contradictions about the witnesses in respect of the statements he recorded were proved in his deposition. In his deposition, he categorically admitted that, in his investigation, it was transpired that accused Babarbhai Vechatbhai Vankar was not present at village Kharoli on 2nd of July, 1999, but on that day, he was present at his job at different village and was serving from 8.00 a.m. to 12.00 noon. Learned Trial Judge, therefore, rightly did not believe the prosecution case. Last witness Hirabhai Valabhai Rathod, examined at Exhibit – 73, is the last Investigating Officer and he filed the charge sheet.

17 From the above appreciation of evidence and reasons recorded by the Trial Court, it is crystal clear that there was a civil dispute between the parties about the ownership of the land, initial version which complainant gave before the police was not of robbery, and that is an after-thought. There are only four accused and the investigation could not reveal that there were any other persons along with the present accused so as to form five persons necessary for sustaining even the charge of the offence under Section 395 of the

Indian Penal Code nor anybody is shown absconding accused in the charge sheet and, therefore, the charge against the accused in respect of Section 395 of the I.P. Code could not be proved. The so called eye witnesses are not reliable and their version as to incident is tainted. Except interested witnesses, no independent witnesses, have been examined by the prosecution in the above said case.

18 On careful scrutiny of the reasons for not placing reliance upon the so called eye witnesses and acquitting the accused are found proper, when reasons recorded by Trial Court for the acquittal are plausible and probable and findings are based upon the evidence recorded, it is not necessary to re-appreciate the evidence. This is so because the mere fact that a view other than the one taken by the Trial Court can be legitimately arrived at by the appellate court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere with the order of acquittal unless the appellate court comes to the conclusion that the entire approach of the Trial Court in dealing with the evidence was patently illegal or the conclusion arrived at by it were wholly untenable. On scrutiny of the reasons, if it is found by the appellate court that the findings of the Trial Court in respect of acquittal are palpably wrong, manifestly erroneous or demonstrably unsustainable, then and then, interference in the order of

acquittal is permitted. By no stretch of reasoning, in the present case, we found that the reasons assigned and findings arrived at by the Trial Court, as discussed above, are manifestly erroneous, palpably wrong or demonstrably unsustainable and, therefore, there is no merit in the present appeal.

19 In view of above, this Appeal stands dismissed.

(J.R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

pnnair